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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/145,690	09/02/98	LONG JR.	C 97-106CIP

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EXAMINER

HYLTON, R

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 10/04/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/145,690

Applicant(s)

Long, Jr.

Examiner

Robin A. Hylton

Group Art Unit

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☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-24 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-24 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Sep 2, 1998 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the sealing bead on the exterior of the container neck finish (claims 13,15) and the groove on the exterior of the container neck finish (claims 14,16) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 37. Correction is required.

Specification

4. The abstract of the disclosure is objected to because it exceeds the acceptable length and it contains the phrase "The present invention provides". Correction is required. See MPEP § 608.01(b).
5. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
6. The disclosure is objected to because of the following informalities: on page 9, line 9, Figure 3 is indicated, but it should be figure 2 instead, on page 12, line 13, "dimension" should be -- dimensioned -- and on page 10, line 11, "in Because" should read -- Because --. Appropriate correction is required.
7. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the elevated bridge portion is not described as a bridge in the specification.

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Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 1-24 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With respect to claim 1, it is unclear what structure constitutes a “valve”. There is no structure set forth which opens and closes to allow venting or to prevent fluid flow.

With respect to claims 9-12, it is unclear how an annular bead can extend around “at least a portion” of the circumference of another structure. An annular bead, by definition, must extend around the entire circumference.

With respect to claims 23 and 24, it is unclear how the at least one member attached to the tamper-indicating ring cooperates with the at least one arcuate projection to assist in breaking the tamper-indicating ring. According to the discussion in the specification at page 10, lines 15-17, a member 40 attaches the tamper-indicating ring to the bottom of the skirt wall and facilitates breaking the tamper-indicating band from the closure skirt. How does this cooperate with the at least one arcuate projection?

With respect to claim 2, how can the at least one elevated bridge be annularly spaced? From what structure is it annularly spaced?

10. Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, the claims are rejected for the following reasons:

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There is an inconsistency between the language in the preamble and certain portions in the body of the claims thereby making the scope of the claims unclear. The applicant is required to clarify what the claims are intended to be drawn to, i.e., either the tamper evident closure or the combination of the tamper evident closure and the container. The applicant is also required to make the language of the claims consistent with his intent. For the purpose of examination, the claims are considered to be drawn to the combination.

How can the frangible elements be both connected to and between the elevated portions of the tamper evident band?

The phrase "around at least a portion of the circumference" is inappropriate since an annular bead by definition must extend around the entire circumference (claims 9-12).

The phrase "eight or nine" is written in alternative language.

It is suggested that "tamper-indicating" be used consistently throughout the claims either with or without the hyphen.

In claim 2, line 3, "define" should be -- defines --.

The open term "comprising" covers one or more. Therefore, the phrase "at least one" is unnecessary for use with "frangible bridge(s)". In addition, the use of "(s)" in association with "bridge" is confusing. MPEP 2111.03.

In claim 2, from what structure is the elevated bridge portion spaced?

11. While applicant may be his or her own lexicographer, a term in a claim may not be given a meaning repugnant to the usual meaning of that term. See *In re Hill*, 161 F.2d 367, 73 USPQ 482 (CCPA 1947).

The term "valve" in claim 1 is used by the claim to mean "depending annular seal," while the accepted

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meaning is "a device that regulates the flow of gasses or liquids or loose materials through a structure by opening and closing."

Dependent claims not specifically mentioned above are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1-8,21,22 are rejected under 35 U.S.C. 102(b) as being anticipated by Sander et al. (Sander). Sander discloses a cap comprising a top portion (11), an annular depending skirt (12), an annular valve (27) depending from the top portion, and a tamper indicating ring (16) frangibly connected to the skirt and including at least one annularly spaced elevated bridge portion (22), said skirt including at least one arcuate projection (18) extending radially inward.

14. Claims 1-3,5,7,21,22 are rejected under 35 U.S.C. 102(b) as being anticipated by Rapeaud et al. (Rapeaud). Rapeaud discloses a cap comprising a top portion (2), an annular depending skirt (1), an annular valve (8) depending from the top portion, and a tamper indicating ring (5) frangibly connected to the skirt and including at least one annularly spaced elevated bridge portion (seen in figure 1 as 15), said skirt including at least one arcuate projection (6) extending radially inward.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 11,13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sander in view of Brownbill. Sander discloses the claimed closure except for the annular bead extending from the closure skirt. Brownbill discloses a closure comprising an annular bead extending from the closure skirt for contacting the exterior container neck finish. It would have been obvious to one of ordinary skill in the art to modify the closure of Sander in view of Brownbill to provide an annular bead extending from the closure skirt for contacting and centering the closure on the container neck.

17. Claims 11, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sander in view of Montgomery '231. Sander discloses the claimed closure except for the annular bead extending from the closure skirt for engaging a groove or a bead on the exterior container neck. Montgomery discloses a closure comprising an annular bead (40) extending from the closure skirt for contacting a groove and a sealing bead (30) on the exterior of the container neck finish. It would have been obvious to one of ordinary skill in the art to modify the closure of Sander in view of Montgomery to provide an annular bead extending from the closure skirt for contacting a groove and a sealing bead exterior container neck finish as an additional seal between the closure and the container.

18. Claims 17, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sander in view of Repp et al. (Repp). Sander discloses the claimed closure except for the eight or nine circumferentially spaced thread leads. Repp discloses a container comprising a plurality of circumferentially spaced thread leads (column 4, line 43-48). It would have been obvious to one of ordinary skill in the art to modify the closure of Sander in view of Repp to provide a plurality of circumferentially spaced thread leads, and more

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specifically eight or nine thread leads, to make removal of the closure easier than a closure having one continuous helical thread.

19. Claims 1-10,21,22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sander in view of Csaszar '408. Sander discloses the claimed closure except for the sealing bead on the valve. Figure 6 of Csaszar discloses an annular valve comprising an annular sealing bead for ensuring firm contact between the closure bead and the interior surface of the container neck (column 8, lines 3-6). It would have been obvious to one of ordinary skill in the art to modify the closure of Sander in view of Csaszar to provide a valve comprising an annular sealing bead for sealing engagement with the internal surface of the container neck for the reasons as taught by Csaszar.

20. Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 10 above, and further in view of Montgomery '231. Sander as modified by Csaszar discloses the claimed closure except for the annular bead extending from the closure skirt for engaging a groove or a bead on the exterior container neck. Montgomery discloses a closure comprising an annular bead extending from the closure skirt for contacting a groove and a sealing bead exterior container neck finish. It would have been obvious to one of ordinary skill in the art to further modify the closure of Sander in view of Montgomery to provide an annular bead extending from the closure skirt for contacting a groove and a sealing bead on the exterior of the container neck finish as an additional seal between the closure and the container.

21. Claims 18,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 12 above, and further in view of Repp. Sander as modified discloses the claimed closure except for the eight or nine circumferentially spaced thread leads. Repp discloses a container comprising a plurality of circumferentially spaced thread leads (column 4, line 43-48). It would have been obvious to one of ordinary skill in the art to further modify the closure of Sander in view of Repp to provide a plurality of

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circumferentially spaced thread leads, and more specifically eight or nine thread leads, to make removal of the closure easier than a closure having one continuous helical thread.

22. Claim 1-8,21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beck et al. (Beck) in view of Kern. Beck discloses the claimed closure except for the annular valve depending from the top portion. Kern discloses a closure comprising an annular valve depending from the top portion. It would have been obvious to one of ordinary skill in the art to provide an annular valve depending from the top portion for providing a seal between the closure and an interior surface of an associated container neck.

Conclusion

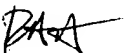
23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art references are cited of interest.

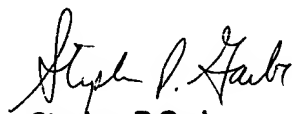
24. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ebony Smith at (703)305-3570.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148. The fax phone number for this Group is (703) 305-3579.

Robin A. Hylton/rah 
September 30, 1999


Stephen P. Garbe
Primary Examiner